IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:::

ORDER

The Factory Manager, Ganganagar Sahkari Spinning Mills Ltd.

vs

Parmatma & Ors.

S.B.CIVIL WRIT PETITION NO.2613/2002 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 18th Sept., 2006

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.Rajesh Joshi, for the petitioner.
Mr.B.L. Bishnoi, for the respondents.

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The petitioner Ganganagar Sahkari Spinning Mills Ltd. has filed this writ petition challenging the award of the learned Labour Court, Sri Ganganagar dated 29.10.2001. In this award, the learned labour court was required to decide reference of the appropriate Government made on 26th July, 1995 to adjudicate upon an industrial dispute referred to it whether the removal of the respondent-workman from their services by the petitioner-

management was legal and justified and if not to what relief, the workman was entitled for.

The learned labour court on consideration of the evidence on record and hearing the arguments of the parties, held that the removal of the respondent-workman from the services of the management on 23.1.1993 was not legal and justified and, therefore, directed the management to reinstatement of the workman with continuity in service and awarded 50% of the back wages.

Shri Rajesh Joshi, learned counsel for the petitioner at the outset submitted that he does not press the writ petition in so far as challenge to the part of the award whereby the retrenchment/removal of the respondent-workman was held to be illegal resulting into consequential direction of his reinstatement. He has mainly confined his challenge to the direction contained in award whereby 50% of the back wages was ordered to be paid to the respondent-workman. According to Shri Rajesh Joshi, the petitioner Mill is passing through financial crisis and it has suffered huge financial losses. In order to highlight the financial crises, learned counsel for the petitioner has invited my attention to the balance-sheet of the company and its profit and loss account, which have been placed

on record as Annex.1 and 2.

Shri Joshi, learned counsel for the petitioner has argued that the petitioner company has been declared as Relief Undertaking on 12.10.2001 under the Rajasthan Relief Undertakings (Special Provisions) Act, 1961, copy of which has been placed on record as Annex.3 such a notifications have been issued subsequently also on periodical basis. It has therefore been prayed that direction with regard to payment 50% of back wages is concerned may be set aside. So far as, relief regarding reinstatement of the petitioner is concerned, the back wages may not been awarded to the petitioner particularly when in respect of retrenchment of 23.1.1997, reference was made on 11.11.1997 and award was passed as delayed as on 29.10.2001 and now it is the year 2006.

On the other hand, Shri B.L. Bishnoi, learned counsel for the respondents argued that even if the petitioner company has been declared as Relief Undertaking, this would not create any legal embargo to deny him back wages when the learned labour court under the Industrial Disputes Act entertained and decided the legitimate claim of the respondent-workman. According to Shri Bishnoi, learned counsel for the respondent, even the notification declaring the petitioner unit as relief undertaking

does not debar the claim of the respondent-workman clearly provides that this said notification would not effect any legal proceedings with regard to payment of the wages of the workman.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the record.

The Hon'ble Supreme Court in the case of Manorma Verma (Smt.) Vs. State of Bihar & Ors reported in 1995 SCC (L&S), 193 wherein in para no.4, their Lordships held as under: -

> "Ordinarily, the consequential order of grant of back wages must follow, unless there are reasons on record which would justify a departure from the normal order. We do not see any reasons on record to come to the conclusion that the appellant was not entitled to back wages. There is also nothing on record to show that during the period she was out of service, she was gainfully employed elsewhere. In the circumstances we allow this appeal and set aside that part of the High Court's order by which the appellant was denied back wages and award her back wages from the date of termination of service till she was reinstated in service under the impugned order of the High Court."

The Hon'ble Supreme Court in the case of U.P. State Brassware Corporation Ltd. & Anr. vs. Uday Narain Pandey,

reported in 2006 (1) SCC 479 in para 22 of the said judgment observed as under:-

> "22.No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act."

While dealing with the same issue in the case of General Manager, Haryana Roadways vs. Rudhan Singh, reported in (2005) 5 SCC p.591, the Hon'ble Supreme Court in para 7 observed as under :-

> "7.In our opinion certain factors, which are relevant for forming an opinion regarding award of back wages, have been completely ignored and, therefore, the award on this point is vitiated. The list of dates given in the special leave petition, which have not been controverted, show that though according to the own case of the respondent his services had been terminated on 28.2.1989, yet he served a demand notice praying for reinstatement in service after two-and-a-half years on 24.8.1991. The State Government made reference to the Industrial Tribunal-cum-Labour Court in the year 1997, which means eight years after the termination of service. Normally, a reference should not be made after lapse of a long period. A labour dispute should be resolved expeditiously and there is no justification for the State Government to sleep over the matter and

> make a reference after a long period of time at its sweet will. It causes prejudice both to the workman and also to the employer. It is not possible for an employer to retain all the documents for a long period and then to produce evidence, whether oral or documentary, after years, as the officers, who may have dealt with the matter, might have left the establishment on account of superannuation or any other reason. The employer is not at fault if the reference is not made expeditiously by the State Government, but it is saddled with an award directing payment of back wages without having taken any work from the workman concerned. The plight of the workman who is thrown out of employment is equally bad as it is a question of survival for his family and he should not be left in a state of uncertainty for a long period."

I have examined the present matter in the light of the law enunciated by the Hon'ble Supreme Court.

Although it is a fact that the notification under Section 3 of the Rajasthan Relief Undertaking (Special Provision) Act, 1961 does not debar the claim of the workman for wages. This would not however bar the legal proceedings before the industrial court or any other court and such proceedings would continue to be maintainable in relation to the industry even if it has been declared a relief undertaking. It however cannot be deduced from this that the general law applicable to labour disputes would not apply to the matters in relation to such relief undertakings. The court can certainly take into consideration the financial position of the industry alongwith several other factors

such as the time period that has elapsed from the date of retrenchment and till making of the reference and, thereafter passing of the award and further time that has been consumed now the writ petition is being decided this Court. These factors would none-the-less be relevant for deciding the matter pertaining to industry which has been declared as relief undertaking. In the facts and circumstances of the case when the management has reinstated the respondent and has given up the challenge to that part of the award, keeping in view over all factors of the matter, it would be only reasonable not require the respondent to pay back wages to the petitioner, I deem it proper to modify the award passed by the learned labour court directing that the award of payment of 50% of the back wages is set aside and accordingly the award is upheld to the extent of direction regarding reinstatement of the respondent-workman.

The writ petition therefore, stands partly allowed as indicated above.

(MOHAMMAD RAFIQ),J.

c.p.goyal/-